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No. 256

In the Supreme Court of the United States

OCTOBER TERM, 1958

ALASKA STEAMSHIP COMPANY, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

BRIEF FOR THE UNITED STATES IN OPPOSITION

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INDEX

	Page
Opinion below	1
Jurisdiction	1
Questions presented	1
Statute involved	2
Statement	2
Argument	3
Conclusion	11
Appendix	12

CITATIONS

Cases:

A. H. Bull Steamship Co. v. *United States*, 123 C. Cls. 520	10
American President Lines v. *United States*, 162 F. Supp. 732	10
Baltimore & Ohio Railroad Co. v. *United States*, 52 C. Cls. 468	9
Callanan Road Improvement Co. v. *United States*, 345 U. S. 507	9
Commissioner v. *National Lead Co.*, 230 F. 2d 161, affirmed on other grounds, 352 U. S. 313	9
Dichman, Wright & Pugh, Inc. v. *United States*, 144 F. Supp. 922	10
Elliott v. *United States*, 37 C. Cls. 136	9
Great Northern Ry. Co. v. *United States*, 315 U. S. 262	8
Miller v. *United States*, 42 C. Cls. 121	9
Norwegian Nitrogen Co. v. *United States*, 288 U. S. 294	6
Pure Oil Co. v. *Tucker*, 164 F. 2d 945	9
Sioux Tribe of Indians v. *United States*, 316 U. S. 317	8
Southeastern Oil Florida, Inc. v. *United States*, 127 C. Cls. 409, certiorari denied, 348 U. S. 834	10
Tiger v. *Western Investment Co.*, 221 U. S. 286	8
United States v. *Bowling*, 256 U. S. 484	8
United States v. *Edmondston*, 181 U. S. 500	9, 10
United States v. *New York and Cuba Mail S. S. Co.*, 200 U. S. 488	9

Statutes: Page

Act of June 28, 1947, Sec. 1, 61 Stat. 190 3
Act of February 27, 1948, Sec. 1 (a), 62 Stat. 38 3
Act of February 28, 1949, 63 Stat. 9 3
Act of June 29, 1949, Sec. 1, 63 Stat. 349 3
Act of June 30, 1950, Sec. 1, 64 Stat. 308 3
Act of August 17, 1950, 64 Stat. 452 3
Merchant Ship Sales Act of 1946, 60 Stat. 41–43, 50 U. S. C. App. 1736, 1737:
Sec. 3 2, 3, 7, 8, 12
Sec. 3 (d) 4, 5, 6, 7, 8, 12
Sec. 3 (e) 5, 14
Sec. 3 (f) 14
Sec. 3 (g) 14
Sec. 4 4, 1
Sec. 4 (a) 15
Sec. 4 (b) 15
Sec. 4 (c) 16
Sec. 14 3
Private Law 629, 84th Cong., 2d Sess., 70 Stat. A55 8
Public Law 496, 83d Cong., 2d Sess., 68 Stat. 481 8
Public Law 665, § 132, 83d Cong., 2d Sess., 68 Stat. 832, 839 8
64 Stat. 1273 4

Miscellaneous:

Annual Report of the Federal Maritime Board, Maritime Administration, 1951, App. L, pp. 111–112 7
11 Fed. Reg. 4702 2, 6, 7
15 Fed. Reg. 3178 4
Hearings on H. R. 3603, House Committee on Merchant Marine and Fisheries, 79th Cong., 2d Sess., pp. 6–7 7
Hearings, Subcommittee on Ships Sales, Charters and Lay-Ups of the House Committee on Merchant Marine and Fisheries, 80th Cong., 1st Sess., pp. 52–53, 55, 105, 143 7
H. R. 3603, 79th Cong. 6
H. Rept. No. 831, 79th Cong., 1st Sess., p. 7 6
H. Rept. No. 2911, 83d Cong., 2d Sess 8
H. Rept. No. 1947, 84th Cong., 2d Sess., pp. 4, 6 8
S. Rept. No. 807, 79th Cong., 1st Sess., p. 12 6
S. Rept. 1276, 83d Cong., 2d Sess 8
S. Rept. No. 1863, 84th Cong., 2d Sess., p. 4 8

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OPINION BELOW

The opinion of the Court of Claims (Pet. App. 1a-6a), modified by order of May 7, 1958 (Pet. App. 7a-8a), is reported at 158 F. Supp. 361.

JURISDICTION

The judgment of the Court of Claims was entered on January 15, 1958. A petition for rehearing, filed February 14, 1958, was denied on May 7, 1958. The petition for a writ of certiorari was filed on August 5, 1958. The jurisdiction of this Court is invoked under 28 U. S. C. 1255 (1).

QUESTIONS PRESENTED

1. Whether, by Section 3 (d) of the Merchant Ship Sales Act of 1946, Congress imposed a floor or mini-

mum sale price below which war-built vessels subject to sale under the Act could not be sold.

2. Whether, in any event petitioner, having accepted the Maritime Commission's contract terms for the sale of a vessel and having voluntarily paid the sale price, is now estopped to contend that it was entitled to a lower price.

STATUTE INVOLVED

Sections 3 and 4 of the Merchant Ship Sales Act of 1946, 60 Stat. 41–43, 50 U. S. C. App. 1736, 1737, are set forth in the Appendix, *infra*, pp. 12–16.

STATEMENT

This action was brought by petitioner to recover $53,862, allegedly representing the amount by which it was overcharged in the purchase of a war-built vessel owned by the United States. The facts underlying the claim are brief and not in dispute.

Pursuant to petitioner's application and offer of July 13, 1948, the Maritime Commission, on July 15, 1948, approved the sale to petitioner of the war-built Cl-M-AV1 vessel, *Terminal Knot*, at a price of $693,862. The sale price of the vessel conformed to the floor price for vessels of the Cl-M-AV1 type previously fixed by the Maritime Commission and published in the Federal Register (11 Fed. Reg. 4702). By its petition (R. 1–4) filed in the Court of Claims on May 24, 1954, petitioner alleged that the sale price was $53,862 in excess of the price authorized by Section 3 of the Merchant Ship Sales Act of 1946.

On the Government's motion for summary judgment, the Court of Claims dismissed the petition (Pet. App. 6a), holding (Pet. App. 1a–6a) that the

price paid by petitioner for the *Terminal Knot* was correctly determined by the Maritime Commission, in conformity with Section 3 of the Act, and that petitioner therefore was not overcharged.

ARGUMENT

1. The only question decided below—whether petitioner was overcharged for the *Terminal Knot*—is of no general importance. The governing statutory authority expired in 1951;[1] and, to the best of our knowledge, there are only six other claims before the Court of Claims which are or may be directly affected by the decision below.[2] These six claims, involving 21 vessels, aggregate approximately $900,000.[3] Moreover, as the decision below holds, petitioner was not overcharged.

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[1] Section 14 of the Merchant Ship Sales Act of 1946, 60 Stat. 50, provided that no contract of sale or of charter shall be made under the Act after December 31, 1947. The termination date for contracts of sale and contracts of charter was extended to January 15, 1951, and June 30, 1950, respectively, by the Acts of June 28, 1947, § 1, 61 Stat. 190; Feb. 27, 1948, § 1 (a), 62 Stat. 38; Feb. 28, 1949, 63 Stat. 9; June 29, 1949, § 1, 63 Stat. 349; June 30, 1950, § 1, 64 Stat. 308; Aug. 17, 1950, 64 Stat. 452.

[2] *Farrell Lines, Inc.* v. *United States*, No. 170-55; *Moore-McCormack Lines, Inc.* v. *United States*, No. 116-65; *American President Lines, Ltd.* v. *United States*, No. 63-56; *Moore-McCormack Lines, Inc.* v. *United States*, No. 118-56; *Southern Steamship Company* v. *United States*, No. 655-53; *New York & Cuba Mail Steamship Company* v. *United States*, No. 132-55.

[3] Petitioner's statement (Pet. 3) that the "Government contends that at least $6,000,000 is involved in this question of statutory construction" is misleading. The $6,000,000 to which petitioner refers was a very rough approximation, made by the Government (R. 26), of the total difference between the statutory sales price (unadjusted) and the statutory floor price for *all* vessels sold by the United States at floor prices.

(*a*) Section 4 of the Merchant Ship Sales Act of 1946 (Appendix, *infra*, p. 15) directed the United States Maritime Commission[*] to sell war-built ships to qualified purchasers at a "statutory sales price." Section 3 (d) of the Act (Appendix, *infra*, pp. 12–13) defined a "statutory sales price" in terms of a percentage—50 per centum in the case of a dry-cargo vessel—of "prewar domestic cost." "Prewar domestic cost" was to be the cost, as estimated by the Commission, of constructing a hypothetical dry-cargo vessel in American shipyards under conditions prevailing on January 1, 1941.

After thus calculating the standard "statutory sales price," the Commission was to make certain adjustments, as they might apply to each vessel sold. These adjustments were: (1) a deduction for depreciation, according to the age of the ship; (2) a deduction for estimated cost of putting the ship "in class;" (3) a deduction for the cost of installing "desirable features" (other than features necessary to put the vessel in class) that might be present in the Commission's hypothetical standard vessel but absent from the particular vessel sold; and (4) an increment to cover the value of desirable features contained in the vessel sold and lacking in the standard vessel.

Finally, Section 3 (d) provided (with an exception not relevant here) that:

> No adjustment [in determining the statutory sales price] * * * shall be made under this

[*] The United States Maritime Commission was abolished in 1950 by Reorganization Plan No. 21, effective May 24, 1950, 15 Fed. Reg. 3178, 64 Stat. 1273. The functions of the Commission were transferred to the Secretary of Commerce, acting through the Maritime Administration. *Ibid.*

> Act which will result in a statutory sales price which (1) in the case of dry-cargo vessels [*e. g.*, the *Terminal Knot*] * * * will be less than 35 per centum of the domestic war cost of vessels of the same type * * *.[5]

The clear effect of this provision, we submit, was to fix a statutory minimum or floor upon the sales price of vessels subject to sale under the Act, and accordingly the Court of Claims correctly determined petitioner was not overcharged when it purchased the *Terminal Knot* in 1948.

The Commission's estimated cost of a C1-M-AV1 type vessel, such as the *Terminal Knot*, was $1,280,000; a statutory sales price computed on the basis of 50 per centum of the 1941 estimated cost was, therefore, $640,000. The "domestic war cost" of a C1-M-AV1 vessel was, however, $1,982,464, and 35 per centum of this figure yielded a sales price of $693,862. (Pet 5-6.) Since the statutory sales price based on prewar domestic costs and before downward adjustments was $53,862 less than 35 per centum of war cost, the Commission, because of the floor or minimum price provision in Section 3 (d), was required to sell, and petitioner agreed to buy, at the higher figure.

(*b*) Petitioner's argument that the statutory sales price for the *Terminal Knot* was $640,000, or 50 per centum of the prewar domestic cost of C1-M-AV1 vessels, presupposes that the statutory limitation, based upon the actual domestic war cost of the vessel,

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[5] "Domestic war cost," as used in Section 3 (d), "means the average construction cost * * * as determined by the Commission, of vessels * * * delivered during the calendar year 1944 * * *." Section 3 (e), Appendix, *infra*, p. 14.

is a limitation or floor only upon the downward adjustments in paragraphs (1) through (4) of Section 3 (d), *supra*. Thus, it is argued (Pet. 6–7) that the statutory sales price for war-built vessels is in all cases 50 per centum of the Commission's estimated prewar domestic cost of the vessel, adjusted downward to the extent that the adjustments do not reduce the price below 35 per centum of the actual wartime cost of the vessel.

This suggested interpretation of Section 3 (d) is contrary to the legislative history of the Act, which confirms that Congress understood the 35 per centum of wartime cost limitation to be a minimum sales price for dry-cargo vessels. For example, House Rept. No. 831, 79th Cong., 1st Sess., contained a comprehensive analysis of the price provisions of H. R. 3603 (which ultimately became law) and described Section 3 (d) as establishing "* * * a floor price below which sales cannot be made. * * *" (p. 7). A similar statement is made in S. Rept. 807, 79th Cong., 1st Sess., p. 12.

To the same effect was the contemporaneous construction of the Act by the agency charged with its administration. See *Norwegian Nitrogen Co.* v. *United States*, 288 U. S. 294, 315. Within weeks after H. R. 3603 became law, the Maritime Commission published in the Federal Register (11 Fed. Reg. 4702) the sales prices for three dry-cargo type vessels (including the C1-M-AV1) fixing the sales prices for these vessels[6] at 35 per centum of domestic war costs

[6] The floor price provision was similarly applicable to the T1-M-BT tanker, the sales price for which was, in accordance

because a sales price based on 50 per centum of the estimated prewar domestic costs of these vessels would result in a substantially lower price. Between 1946 and 1951, when the Commission's authority terminated, over 100 vessels were sold at the floor prices as determined by the Commission.[7] Five times, between 1946 and 1951, Congress extended the Commission's, or its successor's, authority to enter into contracts of sale of war-built vessels[8] without any intimation by Congress that the Commission had not correctly interpreted the pricing formula in Section 3 (d).

Moreover, the Commission's floor prices with respect to C1–M–AV1 and three other type vessels were, in 1946 and 1947, brought to the attention of a Special "Watchdog" Subcommittee of the House Committee on Merchant Marine and Fisheries, set up to follow the Commission's administration of the Act (R. 131–141). Though the Subcommittee manifested some concern that the floor price might impede the sale of C1–M–AV1 and other affected vessels, and that Section 3 might, therefore, be in need of amendment, there was no suggestion that the Commission had erroneously interpreted Section 3 of the Act as enacted.[9]

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with Section 3 (d), fixed at 50 per centum of domestic war cost. 11 Fed. Reg. 4702.

[7] Annual Report of the Federal Maritime Board, Maritime Administration, 1951, App. L, pp. 111–112.

[8] See note 1, *supra*.

[9] Hearings on H. R. 3603, House Committee on Merchant Marine and Fisheries, 79th Cong., 2d Sess., June 4, 1946, pp. 6–7; Hearings, Subcommittee on Ships Sales, Charters and Lay-Ups of the House Committee on Merchant Marine and Fisheries, 80th Cong., 1st Sess., April–June 1947, pp. 52–53, 55, 105, 143.

The Commission's construction of the Act is also supported by other post-enactment legislative history.[10] Subsequent to January 15, 1951, when the ship-sale authority expired, Congress, by special acts, authorized the sale by the Maritime Administration of C1–M–AV1 vessels. Twelve vessels were authorized to be sold to the Government of Brazil at prices "determined under section 3 of the Merchant Ship Sales Act. * * *."[11] Pertinent House and Senate Reports[12] make it clear that Congress understood the Section 3 price of C1–M–AV1 vessels to be the $693,862 floor price, as determined by the Commission in 1946.[13] And, in 1956, by Private Law 629, 84th Cong., 2d Sess., 70 Stat. A55, petitioner itself was authorized to purchase two C1–M–AV1 vessels at prices which had as a base the floor price of $693,862, as determined under Section 3 of the 1946 Act."[14]

2. In its decision, the Court of Claims found it unnecessary to consider any question apart from whether petitioner was overcharged. Additional grounds for denying recovery, however, were urged below.

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[10] *Great Northern Ry. Co.* v. *United States*, 315 U. S. 262, 277, "It is settled that 'subsequent legislation may be considered to assist in the interpretation of prior legislation upon the same subject.' *Tiger* v. *Western Investment Co.*, 221 U. S. 286, 309." See also *United States* v. *Boeing*, 256 U. S. 484; *Sioux Tribe of Indians* v. *United States*, 316 U. S. 317, 329–330.

[11] Public Law 496, 83d Cong., 2d Sess., 68 Stat. 481, 482.

[12] H. Rept. No. 2011, 83d Cong., 2d Sess.; S. Rept. No. 1276, 83d Cong., 2d Sess.

[13] See also Public Law 665, §132, 83d Cong., 2d Sess., 68 Stat. 832, 839, providing for the sale of C1–M–AV1 vessels to the Republic of Korea at the Section 3 price.

[14] S. Rept. No. 1863, 84th Cong., 2d Sess., p. 4; H. Rept. No. 1947, 84th Cong., 2d Sess., pp. 4, 6.

Petitioner's application and offer to purchase the *Terminal Knot*, made on July 13, 1948, were made with full knowledge that the Commission's statutory sales price for the *Terminal Knot* was the published floor price of $693,862. It subsequently contracted with the Commission to purchase the *Terminal Knot* at that price without a protest or reservation of any kind and without any suggestion that the price was excessive or illegal. In these circumstances, by its prior acquiescence in the Commission's determination that the floor price was the proper price for the *Terminal Knot*, we believe that petitioner is estopped, at this late date, to challenge the correctness of the sales price.[17] In any event, even if petitioner may now challenge the correctness of the sales price and even if its interpretation of Section 3 (d) were correct, petitioner is in the position of one who has voluntarily paid money to the Government under what must have been a mistake of law and is faced with the principle that money voluntarily paid to the United States in such circumstances cannot be recovered in the absence of special statute.[18] These questions of estoppel and vol-

[17] Cf. *Callanan Road Improvement Co.* v. *United States*, 345 U. S. 507; *Commissioner* v. *National Lead Co.*, 230 F. 2d 161 (C. A. 2), affirmed on other grounds, 352 U. S. 313.

[18] *United States* v. *Edmondston*, 181 U. S. 500; *Chesebrough* v. *United States*, 192 U. S. 253; *United States* v. *New York and Cuba Mail S.S. Co.*, 200 U. S. 488, 494; *Pure Oil Co.* v. *Tucker*, 164 F. 2d 945, 947-948 (C. A. 8); *Baltimore & Ohio Railroad Co.* v. *United States*, 52 C. Cls. 468; *Miller* v. *United States*, 42 C. Cls. 121; *Elliott* v. *United States*, 37 C. Cls. 136.

In the *Edmondston case*, *supra*, this Court noted:

"It is clear from these references that this court has distinctly and constantly recognized the doctrine that where there has been a voluntary payment of money, using that term in its

untary payment, it may be noted, inhere in virtually all cases where purchasers or charterers of war-built vessels, long after the Commission's approval of the sale or charter, challenge the validity of the Commission's sale or charter terms.[17]

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customary legal sense, the money so paid cannot be recovered, and also that that doctrine applies to cases in which one of the parties is the government, and that money thus voluntarily paid to the government cannot be recovered.

* * * * * * *

* * * In short, and to sum it up in a word, so far as we can see from this record the transaction was purely voluntary on his part, and that while there was a mistake it was mutual, and one of law—a mistake on his part not induced by any attempt to deceive or misrepresentation by the government officials. It is a case of a voluntary payment, and as such the claimant's remedy is by appeal to the discretion of Congress and not by an action in the Court of Claims." [131 U. S. at 510–511, 515.]

[17] In *Southeastern Oil Florida, Inc.* v. *United States*, 127 C. Cls. 409, certiorari denied, 348 U. S. 834, the United States sought, *inter alia*, the Court's review of these questions (No. 247, 1954 Term) and, should the present petition be granted, will urge these points in support of the result reached by the court below. See also *A. H. Bull Steamship Co.* v. *United States*, 123 C. Cls. 520; *Dichman, Wright & Pugh, Inc.* v. *United States*, 144 F. Supp. 922 (S. D. N. Y.); *American President Lines* v. *United States*, 162 F. Supp. 732 (D. Del.).

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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APPENDIX

Sections 3 and 4 of the Merchant Ship Sales Act of 1946, 60 Stat. 41-43 (50 U. S. C. App. 1736, 1737), provide as follows:

DEFINITIONS

SEC. 3. As used in this Act the term—

(a) "Commission" means the United States Maritime Commission.

(b) "War-built vessel" means an oceangoing vessel of one thousand five hundred gross tons or more, owned by the United States and suitable for commercial use—

(1) which was constructed or contracted for by or for the account of the United States during the period, beginning January 1, 1941, and ending with September 2, 1945; or

(2) which, having been constructed during the period beginning September 3, 1939, and ending with September 2, 1945, was acquired by the United States during such period.

(c) "Prewar domestic cost", as applied to any type of vessel, means the amount determined by the Commission, and published by the Commission in the Federal Register, to be the amount for which a standard vessel of such type could have been constructed (without its national defense features) in the United States under normal conditions relating to labor, materials, and other elements of cost, obtaining on or about January 1, 1941. In no case shall the prewar domestic cost of any type of vessel be considered to be greater than 80 per centum of the domestic war cost of vessels of the same type.

(d) "Statutory sales price", as applied to a particular vessel, means, in the case of a dry-cargo vessel, an amount equal to 50 per centum

of the prewar domestic cost of that type of vessel, and in the case of a tanker, such term means an amount equal to 87½ per centum of the prewar domestic cost of a tanker of that type, such amount in each case being adjusted as follows:

(1) If the Commission is of the opinion that the vessel is not in class, there shall be subtracted the amount estimated by the Commission as the cost of putting the vessel in class.

(2) If the Commission is of the opinion that the vessel lacks desirable features which are incorporated in the standard vessel used for the purpose of determining prewar domestic cost, and that the statutory sales price (unadjusted) would be lower if the standard vessel had also lacked such features, there shall be subtracted the amount estimated by the Commission as the amount of such resulting difference in statutory sales price.

(3) If the Commission is of the opinion that the vessel contains desirable features which are not incorporated in the standard vessel used for the purpose of determining prewar domestic cost, and that the statutory sales price (unadjusted) would be higher if the standard vessel had also contained such features, there shall be added the amount estimated by the Commission as the amount of such resulting difference in statutory sales price.

(4) There shall be subtracted, as representing normal depreciation, an amount computed by applying to the statutory sales price (determined without regard to this paragraph) the rate of 5 per centum per annum, for the period beginning with the date of the original delivery of the vessel by its builder and ending with the date of sale or charter to the applicant in question, and there shall also be subtracted an amount computed by applying to the statutory sales price (determined without regard to this paragraph) such rate not in excess of 3

per centum per annum in the case of a vessel other than a tanker, and not in excess of 4 per centum per annum in the case of a tanker, for such period or periods of war service as the Commission determines will make reasonable allowance for excessive wear and tear by reason of war service which cannot be or has not been otherwise compensated for under this subsection.

No adjustment, except in respect of passenger vessels constructed before January 1, 1941, shall be made under this Act which will result in a statutory sales price which (1) in the case of dry-cargo vessels (except Liberty type vessels) will be less than 35 per centum of the domestic war cost of vessels of the same type, (2) in the case of any Liberty type vessel will be less than 31½ per centum of the domestic war cost of vessels of such type, or (3) in the case of a tanker will be less than 50 per centum of the domestic war cost of tankers of the same type. For the purposes of this Act, except section 5, all Liberty vessels shall be considered to be vessels of one and the same type.

(e) "Domestic war cost" as applied to any type of vessel means the average construction cost (without national defense features) as determined by the Commission, of vessels of such type delivered during the calendar year 1944, except in case of any type of vessel the principal deliveries of which were made after the calendar year 1944, there shall be used in lieu of such year 1944 such period of not less than six consecutive calendar months as the Commission shall find to be most representative of war production costs of such type.

(f) "Cessation of hostilities" means the date proclaimed by the President as the date of the cessation of hostilities in the present war, or the date so specified in a concurrent resolution of the two Houses of the Congress, whichever is the earlier.

(g) "Citizen of the United States" includes a corporation, partnership, or association only if it is a citizen of the United States within the meaning of section 2 of the Shipping Act of 1916, as amended. The term "affiliated interest" as used in sections 9 and 10 of this Act includes any person affiliated or associated with a citizen applicant for benefits under this Act who the Commission, pursuant to rules and regulations prescribed hereunder, determines should be so included in order to carry out the policy and purposes of this Act.

SALES OF WAR-BUILT VESSELS TO CITIZENS.

SEC. 4. (a) Any citizen of the United States may make application to the Commission to purchase a war-built vessel, under the jurisdiction and control of the Commission, at the statutory sales price. If the Commission determines that the applicant possesses the ability, experience, financial resources, and other qualifications, necessary to enable him to operate and maintain the vessel under normal competitive conditions, and that such sale will aid in carrying out the policies of this Act, the Commission shall sell such vessel to the applicant at the statutory sales price.

(b) At the time of sale, the purchaser shall pay to the Commission at least 25 per centum of the statutory sales price. The balance of the statutory sales price shall be payable in not more than twenty equal annual installments, with interest on the portion of the statutory sales price remaining unpaid at the rate of 3½ per centum per annum, or shall be payable under such other amortization provisions which permit the purchaser to accelerate payment of the unpaid balance as the Commission deems satisfactory. The obligation of the purchaser with respect to payment of such unpaid balance with interest shall be secured by a preferred mortgage on the vessel sold.

(c) The contract of sale and the mortgage given to secure the payment of the unpaid balance of the purchase price, shall not restrict the lawful or proper use or operation of the vessel.